DOCUMENT RESUME

ED 341 591 SO 021 362

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TITLE The U.S. Supreme Court's Philadelphia Decade.
PUB DATE 91
NOTE 10p.
PUB TYPE Information Analyses (070)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Citizenship Education; Court Litigation; *Court Role; Federal Courts; Government (Administrative Body); Laws; Legal Problems; Social Studies; *United States History
IDENTIFIERS *Pennsylvania (Philadelphia); *Supreme Court

ABSTRACT

Before Washington, D.C. became the permanent home of the United States Supreme Court, first New York and then Philadelphia hosted its meetings. From 1791 to 1801 the Court met in Philadelphia. This paper reviews the highlights of the Court's cases during this formative decade. Among the most important developments in the Court's jurisprudence at this time involved international laws of the seas, state sovereignty, establishing procedures for parties appearing before the Court, and, what are still its most important institutional missions today, the interpretation of the Constitution and Congress' will. Given the importance placed upon the Bill of Rights today, it is ironic that none of the cases of the Court from its Philadelphia decade even mention it. (DB)

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New York City hosted the first meetings of the U. S. Supreme Court. And Washington was the site of Chief Justice Marshall's 35-year reign over the Court. But the Court's home during its formative first decade was a small brick building at Fifth and Chestnut Streets in Philadelphia. What did it accomplish during its ten years there between 1791 and 1801?

The Supreme Court sat in Philadelphia for twenty terms - February and August of each year - with decisions handed down in eighteen of them. (The 1793 Yellow Fever epidemic was so fierce that not even the Supreme Court dared to meet.) Early terms produced few rulings. 1796 was the Court's most productive year of the decade with five decisions in February and eleven in August.

It began without fanfare. The opening of the United States Supreme Court for business got less press coverage than the military salute fired in honor of Governor Mifflin's birthday. But here, on August 4, 1791, the Court handed down its first decision: Lower courts could not send cases to the Supreme Court; Cases could come before it only on writs of error issued by the Supreme Court's own clerk. [West v. Barnes, 2 D. 401 (1791)]

The Court firmly established control of its own docket and procedures, an absolute must for effective functioning. Its business brought a parade of privateers and pirates, foreign ministers, sovereign states, carriage owners, rebels, bond holders, and others before its bench to be heard. Here are some highlights.

Privateers and Pirates

The United States was on its second attempt to establish a working government. A functioning court system was essential to that goal. Ships taken as prizes on the high seas focused the attention of foreign states, including Portugal, Denmark, Holland, France, England and other countries on the fledgling Court. Foreign governments were spectators of Congress, but they were participants before the Court. And for the United States to maintain a believable neutrality in a world filled with war, its courts had to fulfill - and further develop - the international law regarding takings on the high seas. One prize case was decided in 1794, four in 1795 and eight in 1796. These cases raised diverse issues: A case between a French privateer and its prize's Swedish owners was ordered heard by the U.S. court in Maryland - not before the French consul; A determination of prize status reached by a Revolutionary Era court was upheld, witnessing to the world the continuity in American institutions; Prize agents who paid the sale proceeds of a ship to its captors without a court order were held liable for restitution to the ship's rightful owners.

Just how far could American shipbuilders go before they compromised our neutrality? The Court ordered restitution to the owners of a Dutch vessel captured by a ship fitted out in Charleston and commanded by a U.S. citizen because the U.S. and Holland were at peace and the capture was therefore illegal. But the capture of a Dutch ship by a French vessel recently rebuilt in Philadelphia's shipyards was all right. Ditto for a ship outfitted

in America, armed at a French port by the French owner and taking an English prize which was sent to dock at Charleston harbor. Replacement or repair of a privateer's equipment in American ports was acceptable; Augmentation was not.

The very names of the vessels take us back to a time of adventure and high drama: French privateers commanded the Citizen Genet; L'Ami de la Liberte; La Vengeance; and La Montagne. Captured ships had more innocuous names: the sloop Betsey; the Pilgrim; the Susanna; the William Lindsey; the brigantine Magdalina; the ship Mary Ford; the brig Everton; the ship Phoebe Ann; the Grand Sachem, an American vessel plying the Spanish Main under false Spanish papers and flag; the Dutch ship Den Onzekoren and others. Ministers and consuls got involved. The French consul turned one case into an international incident by formally objecting to the U. S. Government about the decision of the Court, then abandoning the vessel and discharging her officers and crew!

A very difficult case was heard in 1800, during a time of bad blood with France. A French privateer captured the American ship Eliza twenty-nine days after Congress declared France an enemy. Three weeks later an armed U. S. vessel recaptured her and filed for salvage rights. Recognizing that the U.S. was in a "qualified state of hostility" with France, though not open warfare, the Court granted the U. S. ship half the Eliza's proceeds as salvage. The Justices' unease with this state of "undeclared war" shows clearly in their opinions, and provides a distant foreshadowing of Korea and Viet Nam.

State Sovereignty

Almost as touchy as privateering cases were the cases brought by American citizens against the governments of states other than their own. The reader can almost see the Justices squirm as they try every procedure imaginable to delay deciding cases involving state governments. When the Eleventh Amendment was ratified February 7, 1795, removing such cases from the Court's jurisdiction, there was an almost audible sigh of relief as the Court swept the docket clean.

It had not taken long for the first dispute to reach the Court: Oswald v. The State of New York, 2 D. 401 (1792) was the third case decided by the Court. A summons had been served on New York and a motion was made to compel its appearance. While the Court held the motion under advisement, it was voluntarily withdrawn. The same cause came up again the next term, however, and the Court ruled that the State had to respond or show cause why it did not. And in 1793 the case was back. The State had not appeared, so the Court gave New York until the opening of the following term to respond or face default judgment.

The Court's fourth case also involved a State: A bond was claimed by the State of Georgia under an act confiscating British debts. After four days of argument, the Court concluded that Georgia's Act did not confiscate, but only sequestered British debt, and when peace was restored, so was the original bondholder's right to recover. The State of Georgia v. Brailsford, 2 D. 402; 3 D. 1 (1794)

The case that sparked the Eleventh Amendment - Chisholm v. Georgia, 2 D. 419 (1793) - lead to an order for default judgment and judgment for the plaintiff as a result of the State's refusal to appear and plead. The Writ of Enquiry against Georgia, however, was not sued out or executed and this was one of the cases mooted by ratification of the Eleventh Amendment. Hollingsworth v. Virginia, 3 D. 378 (1798)

Making the Court Work

Fully a third of the cases heard in Philadelphia, starting with the first two, involved establishing procedures for litigants and the Court. Some involved protecting the Court's sovereignty. In one case the French minister had complained to President Washington about a district court's decision. Washington sent the complaint to the Supreme Court, and it refused to mandamus the lower court to do the foreign minister's bidding. United States v. Judge Lawrence, 3 D. 42 (1795). Similarly, the State of New York was denied an injunction to stop a case in which it was not a party, even if the major issue in the case was whether certain land lay in New York or Connecticut. New York v. Connecticut, 4 D. 1 (1799)

Many of the procedural decisions were later changed or superceded, but some control our practice today: The general refusal to award legal fees in American cases (in contrast to British practice) goes back to Arcambel v. Wiseman, 3 D. 306 (1796). The refusal to review interlocutory orders originated with

Rutherford v. Fisher, 4 D. 22 (1800). Even though all parties in one case submitted a joint statement of facts to the Supreme Court for an opinion which would then be entered as the Circuit Court's decision, the high Court refused: Only cases coming up through regular channels by Writ of Error would be considered. Dewhurst v. Coulthard, 3 D. 409 (1799) In considering such cases, facts found by the trial court were and are conclusive. Wiscart v. Dauchy, 3 D. 321 (1796) The fundamental principle that a court cannot "travel out of the record to ascertain a fact" was affirmed in Jennings v. Brig Perseverance, 3 D. 336 (1797).

The reliance on English case law and ancient statutes that has spawned over three thousand references to early English cases in American courts can be traced back to a bench ruling made August 8, 1791. (5 U.S. [1 Cranch] xvi)

The Court also took what today might be called a "pro-active" stance, sua sponte dismissing cases where diversity of citizenship was not clearly shown or refusing a commission to take depositions for a defect not argued by the parties. (Bingham v. Cabot, 3 D. 382 (1798), striking off many diversity cases; Vanstophorst v. Maryland, 2 D. 401 (1791), the Court's second decision.)

By the end of the decade, the Court had adopted rules for governing lawyers and established procedures to cover many situations. The form of practice before the Supreme Court was taking shape and definition.

The Constitution and Congress' Will

In addition to setting up its own machinery and mediating battles over ships, the Court did what the Court still does: Interpret laws and the Constitution. This year, in addition to celebrating the bicentennial of the Court's first case on August 4th, we will celebrate the bicentennial of the ratification of the Bill of Rights on December 15th. In light of the universal agitation to adopt the Bill of Rights, it is ironic that none of the cases of the Court for the first decade even mention it. The only opinion touching on one of the first ten Amendments came out of the Whiskey Rebellion of Western Pennsylvania: One rebel, though charged with treason against the U. S., was nevertheless allowed to be released on bail, of $4,000, with two sureties bound to an equal amount. U.S. v. Hamilton, 3 D. 17 (1795)

Twice the Court addressed revenue laws dear to Congress. Daniel Hylton of Virginia, owner of 125 "chariots" for his own use, challenged a national duty imposed on all carriages. The Court found this to be a Constitutionally acceptable duty rather than a Constitutionally forbidden direct tax. Hylton v. U.S., 3 D. 171 (1796) Later the forfeiture of over $800 worth of watches under a Congressional Act regulating coastal vessels was upheld as part of the nation's revenue system. Priestman v. U.S., 4 D. 28 (1800). The Court emphasized that such laws were "salutary" for the whole country and must be given due deference. These cases also establish, long before Marbury v. Madison, that the Court could pass on the Constitutionality of Acts of Congress.

Conclusion

All the decisions of the U. S. Supreme Court for the ten years it sat in Philadelphia fill fewer than 600 printed pages. Alexander Dallas had to collect cases for all courts of record sitting in Philadelphia from 1754 to 1790 to fill his first volume. U. S. Supreme Court cases filled pages 400-480 of volume 2 when it was issued in 1798; all of volume 3, printed in 1799; and pages 1-46 of volume 4 (1807). In those pages are found the foundation and corner stones of American jurisprudence. It is a worthwhile legacy of the Court's sojourn in the cradle of liberty.